



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 7, 2014

MEMORANDUM

TO: Patricia C. Orrock
Chief Compliance Officer

Thomas Hintermister
Assistant Staff Director
Audit Division

FROM: Lisa J. Stevenson
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SUBJECT: Draft Final Audit Report on the Democratic Party of Illinois (LRA 887)

I. INTRODUCTION

The Office of the General Counsel reviewed the Draft Final Audit Report ("DFAR") on the Democratic Party of Illinois ("the Committee"). The DFAR contains four findings: Misstatement of Financial Activity (Finding 1); Recordkeeping for Employees (Finding 2); Fundraising Receipts (Finding 3); and, Unreported Levin Fund Activity (Finding 4). Our comments address Finding 2 (Recordkeeping for Employees) and Finding 3 (Fundraising Receipts). We concur with any findings not specifically discussed in this memorandum. If you have any questions, please contact Danita C. Alberico, the attorney assigned to this audit.

II. RECORDKEEPING FOR EMPLOYEES (Finding 2)

The DFAR finds that the Committee did not maintain monthly logs in accordance with 11 C.F.R. §106.7 (d)(1) to document the percentage of time each employee spent on federal election activity ("FEA"). For 2009 and 2010, the Committee was required to maintain logs for payroll totaling \$729,125. During audit fieldwork, the Committee provided a payroll log that was maintained for September 2010, but the log did not include the percentage of time that employees spent in connection with federal election activity. The Committee also provided agreement-for-services contracts, campaign employment applications and IRS W-4 forms for most of its employees. The auditors advised this Office, however, that this documentation, even when considered together with the September 2010 logs, did not provide a breakdown of the employees' actual time spent on federal and non-federal activities, thus making it impossible for the auditors to calculate the percentages from the information submitted. In addition, in response to the exit conference, the Committee submitted notarized and sworn affidavits by the Committee's executive director and coordinated campaign director that discussed the amount of compensated time spent by each employee on activities in connection with federal elections.

The DFAR finds that the notarized and sworn affidavits were not sufficient to resolve the finding because the documents did not provide the information required under 11 C.F.R. §106.7 (d)(1). In discussion with this Office, the auditors also indicated that the notarized and sworn affidavits could not have resolved the finding because the documents were not created and maintained prior to issuance of the audit notification letter. This rationale, however, is not discussed in the DFAR. We recommend that the auditors make clear in the DFAR that while the notarized and sworn affidavits may be useful for allocation purposes, they are not sufficient to fulfill the recordkeeping requirement due to the timeframe in which they were prepared. *See* Final Audit Report of the Commission on the Georgia Federal Elections Committee (Aug. 9, 2011) (Commission found that the committee had not maintained adequate documentation detailing time spent on federal activities for employees despite the committee's submission of declarations from its employees attesting to the amount of time spent on federal activities in connection with a federal election).

The Committee acknowledged that it needed to improve its system for maintaining monthly payroll logs. It also provided the auditors with a sample payroll log that it intends to use as part of its general compliance procedures in the future. The Audit Division informed this Office that the sample payroll log would be sufficient for audit compliance because the log provides columns for actual federal and non-federal hours worked, a 'Type of FEA' column for federal hours worked, and it totals the hours and gives a percent of FEA hours worked as compared to the total hours worked. The DFAR, however, does not indicate whether the sample log would be sufficient to provide the percentage of time that the employees spent on FEA. To encourage compliance with the Commission's regulations and to assist the Committee, we recommend that the auditors specifically state in the DFAR that the Committee's sample payroll log would be sufficient and the reasons why.

III. FUNDRAISING RECEIPTS (Finding 3)

The DFAR finds that the Committee's federal account received \$75,800 from 10 fundraising events. Although the federal account received the funds, the Committee did not share in any of the costs incurred in the fundraising. Four of the events were held to benefit a non-federal campaign. For the six other events, the auditors did not have sufficient information to conclude whether the events were joint fundraising events with other political committees or Committee fundraising events solely benefiting the Committee's federal and non-federal accounts.

In the Interim Audit Report ("IAR"), the Audit staff recommended that the Committee demonstrate that it could permissibly deposit the funds totaling \$75,800 in its federal account or the auditors would consider the funds impermissible funds that should be transferred to the Committee's non-federal account. The Committee transferred \$75,800 to its non-federal account in response to the IAR recommendation. The Committee acknowledged that all of the fundraising events were non-federal events but contended that the amounts identified in the IAR were insubstantial when compared with the total amounts raised through the fundraising events. The Committee claimed that it is permissible to deposit in a federal account an "insubstantial" amount of funds received through non-federal fundraising events when the committee did not seek those contributions. It also argued that neither the allocation rules nor the joint fundraising rules are triggered when a bona fide non-federal fundraising event elicits a *de minimis* number of federal contributions. The Committee said, however, that due to limited documentation and to eliminate any question of noncompliance, it transferred the \$75,800 to the Committee's non-federal account.

We disagree with the Committee's assertions. The Commission has made clear the types and sources of funds that may be deposited in a committee's federal account. Only contributions meeting one or more of the following conditions may be deposited: (1) contributions designated for the federal account; (2) contributions that result from a solicitation which expressly stated that the contribution would be used in connection with a federal election; or (3) contributions from contributors who were informed that all contributions were subject to the prohibitions and limitations of the Act. 11 C.F.R. § 102.5(a)(2)(i)-(iii). "The purpose of this regulation is to assure that funds placed in [the federal] account are from contributors who know the intended use of their contributions." Explanation and Justification for Organizations Financing Political Activity in Connection With Federal and Non-Federal Elections, Other Than Through Transfers and Joint Fundraisers: Account and Accounting, 67 Fed. Reg. 49,073 (July 29, 2002). The Committee did not show that any of the funds it deposited in its federal account met these criteria. There is no exception to the Commission's rules that would permit a *de minimis* amount of funds, the origins of which are either clearly non-federal or cannot be determined, to be deposited in a committee's federal account. Although the Committee complied with the Audit staff's IAR recommendation to transfer the \$75,800 to its non-federal account, we conclude the Committee's legal assertions are without merit. We, therefore, recommend that the auditors revise the DFAR to address the Committee's assertions on this issue.